

1 Kramer and Associates
Michael C. Kramer, ABA #9605031
2 542 4th Avenue, Suite 207
Fairbanks, Alaska 99701
3 Telephone: (907) 888-4098
Email: mike@mikekramerlaw.com

4
Richard W. Sawyer
5 Neufeld Scheck & Brustin, LLP
99 Hudson Street, 8th Floor
6 New York, NY 10013
Telephone: (212) 965-9081
7 Email: rick@nsbcivilrights.com

8 *Attorneys for Marvin Roberts and Eugene Vent*

9 MacDonald, Hoague & Bayless
705 Second Avenue, Suite 1500
10 Seattle, WA 98104
Telephone: (206) 622-1604
11 Email: jtaren@ktglawyer.com

12 Thomas R. Wickwire, ABA #7111049
2775 Hanson Road, Suite 1
13 Fairbanks, Alaska 99709
Telephone: (907) 474-0068
14 Email: tom@twickwire.com

15 *Attorneys for Plaintiffs George Frese and Kevin Pease*

16
17 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

18 EUGENE VENT, KEVIN PEASE, and
GEORGE FRESE,

19 Plaintiffs,

20 v.

21 CITY OF FAIRBANKS, *et al.*,

22 Defendants.

Case No. 4:17-cv-00034-HRH
Case No. 4:17-cv-00035-HRH

Consolidated Cases

SCHEDULING AND PLANNING
CONFERENCE REPORT

SCHEDULING AND PLANNING CONFERENCE REPORT

I. Meeting.

In accordance with the Court's scheduling order and Federal Rule of Civil Procedure 26(f), Plaintiffs attempted to confer with Defendants on November 2, 2020. Defendants, however, refused to participate, claiming that their now-pending motion to bifurcate absolved them of any responsibility for meeting the Court's November 11, 2020 deadline for filing this report. *See* D.E. 75. Plaintiffs were represented by Anna Benvenuti Hoffmann, Rick Sawyer, Katie Haas, Tiffany Cartwright, Jeffrey Taren, Rebecca Talbot, and Reilly Cosgrove. Defendants were represented by Matthew Singer and Joe Evans.

Plaintiffs now submit the following in accordance with the Court's order.

Plaintiffs also request that the Court set a deadline by which the Defendants must answer the operative complaint, as they have not filed an answer since the Court denied their motion to dismiss.

II. Discovery Plan.

A. Timing, Form and Disclosure Requirements. Please refer to Rule 26(f)(3)(A), Federal Rules of Civil Procedure. Are there changes that the parties are proposing to that rule for this case under Rule 26(a)?

Yes ☐ No ☒

B. Initial Disclosures / Preliminary Witness Lists.

1. The information required by Rule 26(a)(1), Federal Rules of Civil

Procedure:

(a) ☐ Has been exchanged by the parties.

(b) ☒ Plaintiffs propose that initial disclosures be exchanged on or before December 18, 2020.

2. Preliminary witness lists:

(a) ☐ Have been exchanged by the parties.

(b) ☒ Plaintiffs propose that preliminary witness lists be exchanged on or before December 18, 2020.

3. Disclosure Statement. The disclosure requirements of Rule 7.1, Federal Rules of Civil Procedure:

(a) ☐ Have been complied with.

(b) ☐ Compliance will be accomplished on or before

(c) ☒ Rule 7.1 is not applicable.

C. Subjects and Timing of Discovery. *See* Rule 26(f)(3)(B), Federal Rules of Civil Procedure.

1. List the subjects on which discovery may be needed:

Defendant officers' investigative misconduct, including coercing witnesses, fabricating evidence, and suppressing exculpatory evidence, causing Plaintiffs' wrongful convictions for a murder they did not commit.

1 Whether the release-dismissal agreement insisted upon by the prosecution
2 after Plaintiffs' actual innocence had been established in a five-week post-
3 conviction hearing—which included exonerating testimony from the true
4 perpetrator and eyewitness testimony of unlawful police coercion—was in the
5 public interest.

6 Whether Plaintiffs entered into that agreement voluntarily despite being
7 unlawfully incarcerated or on parole for a crime they did not commit.

- 8 2. Should discovery be conducted in phases or limited to or focused
9 on particular issues? Yes ☐ No ☒

10 Bifurcation of discovery will waste judicial resource because factual issues
11 related to the enforceability of the release dismissal agreement must be decided by
12 a jury and is not separable from the official misconduct causing Plaintiffs'
13 wrongful conviction.

- 14 3. Absent good cause, the proposed date for completion of all
15 discovery should be no later than **twelve months** from the date of
16 this report.

- 17 4. **Final Discovery Witness List.** A final discovery witness list
18 disclosing all lay witnesses whom a party may wish to call at trial
19 shall be served and filed 45 days prior to the close of fact
20 discovery.¹

21
22 ¹ Each party shall make a good faith attempt to list only those lay witnesses that the party reasonably
believes will testify at trial.

1 5. **Close of Fact Discovery.** Fact discovery will be completed on or
2 before July 30, 2021.

3 6. **Expert Discovery.** *See* Rule 26(a)(2), Federal Rules of Civil Procedure.

4 (a) Expert witnesses shall be identified by each party on or
5 before August 30, 2021, and each party may identify
6 responsive supplemental expert witnesses within 14 days
7 thereafter.

8 (b) Expert disclosures (reports) required by Rule 26(a)(2) will be
9 disclosed:

10 (i) By all parties on or before September 30, 2021.

11 (ii) Rebuttal reports on or before 30 days from the service of
12 the report being rebutted.

13 (c) Expert witness discovery (include depositions) shall be completed
14 by: November 11, 2021.

15 **D. Preserving Discovery and Electronically Stored Information (ESI)**

16 1. Are there issues about the disclosure, discovery, or preservation of ESI,
17 including the form or format in which it should be produced? *See*
18 Rule 26(f)(3)(C), Federal Rules of Civil Procedure.

19 Yes ☐ No ☒ The parties have not met and conferred concerning ESI.
20 Plaintiffs are not aware at this time of any issue concerning its disclosure
21 but reserve their right to raise any issues once Defendants meaningfully
22

engage on this topic.

2. Please state how ESI should be produced:

3. Are there issues with preserving non-ESI discovery?

Yes ☐ No ☒ The parties have not met and conferred concerning non-ESI discovery. Plaintiffs are not aware at this time of any issue concerning its disclosure but reserve their right to raise any issues once Defendants meaningfully engage on this topic.

E. Claims of Privilege or Protection of Attorney Work Product *See* Rule 26(f)(3)(D), Federal Rules of Civil Procedure.

1. ☐ There is no indication that this will be an issue.
2. ☐ The parties have entered into a confidentiality agreement.
3. ☒ Plaintiffs are prepared to negotiate a confidentiality agreement, but Defendants have refused to participate in this process.

F. Limitations on Discovery. *See* Rule 26(f)(3)(E), Federal Rules of Civil Procedure.

1. ☐ The limitations contained in Rules 26(b), 30, and 33, Federal Rules of Civil Procedure, and in Local Civil Rules 30.1 and 36.1, will apply except as indicated below.

1 2. ☒ The maximum number of depositions by each party will not
2 exceed **15** per side.

3 (a) ☐ Depositions will not exceed **10** hours as to any
4 deponent.

5 (b) ☐ Depositions will not exceed **7** hours as to non-party
6 deponents.

7 (c) ☐ Depositions will not exceed **10** hours as to party
8 deponents.

9
10 3. ☐ The maximum number of interrogatories posed by each party
11 will not exceed **10**.

12 4. ☐ The maximum number of requests for admissions posed by
13 each party will not exceed **20**, except for requests to admit the
14 authenticity of a document.

15 5. ☐ Other limitations: The parties may seek leave of Court if they
16 wish to exceed the number of interrogatories, requests for
17 admission, or depositions as set forth above.

18
19 **G. Supplementation of Disclosures and Discovery Responses.** Please refer to
20 Rule 26(e)(1) and (e)(2), Federal Rules of Civil Procedure. Do the parties
21 request that the Court enter an order that is different from these rules (*e.g.*
22 supplementation at 30-day intervals)?

1 Yes ☐ No ☒ [If yes, explain:]

2 **III. Pretrial Motions.**

3 **A.** Are there preliminary motions as to jurisdiction, venue, arbitration, and/or
4 statutes of limitation that should be filed within 60 days?

5 Yes ☐ No ☒

6 **B.** Motions must be served and filed within the times specified in applicable
7 rules. Complete the following only if the parties are proposing deadline(s)
8 that are different from the applicable rules:

- 9 1. Motions to amend pleadings or add parties will be filed not later than
10 **November 11, 2021**. Thereafter, a party must seek leave of the Court to
11 modify this deadline. *See* Rule 16(b)(3)(A) and (4), Federal Rules of
12 Civil Procedure.
- 13 2. Motions under the discovery rules will be filed not later than **June 30,**
14 **2021.**
- 15 3. Dispositive motions (including motions for summary judgment) will be
16 filed not later than **December 11, 2021.**
- 17 4. Motions to exclude expert testimony shall be filed and served not later
18 than **December 11, 2021.**

19 **IV. Trial.**

20 **A.** The case is expected to take **10–15** days to try.

21 **B.** Has a jury trial been demanded? Yes ☒ No ☐

1 C. Is the right to jury trial disputed? Yes ☐ No ☒

2 D. The parties ☐ do / ☒ do not request the scheduling of a trial date at this
3 time.²

4 1. If a trial date is requested at this time, the parties' report shall include a
5 minimum of three alternative dates for the start of the trial, at least two of
6 which are 5 to 7 months from the close of all discovery.

7 2. If a trial date is not established at this time, the court will call upon the
8 parties to certify that the case is ready for trial as provided in Local Civil
9 Rule 40.1(b).

10 **V. Other Provisions.**

11 **A. Court Conference.** The parties ☒ do / ☐ do not request a conference with
12 the court before entry of a scheduling order.

13 Defendants have refused to participate in the negotiation of this scheduling order,
14 and, therefore a conference with the Court may be advisable to avoid scheduling conflicts
15 not currently available to Plaintiffs.

16 **B. Consent to Proceed before a Magistrate Judge.**

17 The parties ☐ do / ☒ do not consent to trial before a magistrate judge.

18 **C. Early Settlement / Alternative Dispute Resolution.**

19 1. Do the parties request immediate assistance by way of a
20

21 ² The decision of whether to establish a trial date at this stage of the proceedings rests with the discretion
22 of the assigned judge. Counsel and self-represented parties are advised to contact the assigned judge's
Data Quality Analyst (DQA) to determine the judge's practice for establishing a trial date.

1 settlement conference or alternative dispute resolution?

2 Yes ☐ No ☒ *[If yes, explain:]*

3 2. Do the parties wish to consider private mediation or a settlement
4 conference with a judicial officer of this court at a later date?

5 Yes ☐ No ☒

6 **D. Related Cases.** Are the parties aware of any related cases as defined by
7 Local Civil Rule 16.1(e)? Yes ☐ No ☒ *[If yes, describe:]*
8

9 **VI. Report Form.**

10 **A.** Have the parties experienced a problem in using this form?

11 Yes ☐ No ☒ *[If yes, explain:]*

12 **B.** Are there additional subjects that the parties would propose to add to this
13 form? Yes ☐ No ☐ *[If yes, explain:]*

14 Dated: November 11, 2020

15 KRAMER AND ASSOCIATES

NEUFELD SCHECK & BRUSTIN, LLP

16 By: /s/ Mike Kramer
17 Michael C. Kramer, ABA #9605031
18 Attorneys for Marvin Roberts and Eugene
Vent

By: /s/ Rick Sawyer
Richard W. Sawyer
Attorneys for Marvin Roberts and Eugene
Vent

19 MACDONALD HOAGUE & BAYLESS

20 By: /s/ Tom Wickwire
21 Thomas R. Wickwire, ABA #7111049
22 Attorneys for Plaintiffs George Frese and
Kevin Pease

By: /s/ Tiffany Cartwright
Tiffany M. Cartwright
Jeffrey L. Taren
Attorneys for Plaintiffs George Frese and
Kevin Pease

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Dated this 11th day of November, 2020.

Tiffany M. Cartwright